

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

June 14, 2005

Chairman R. Hilt called the meeting to order at 4:01 p.m. and roll was taken.

MEMBERS PRESENT: E. Fordham, R. Hilt, S. Brock, B. Larson, J. Clingman-Scott,
C. Kufta

MEMBERS ABSENT: J. Wallace, excused

STAFF PRESENT: M. Cameron, D. Leafers, L. Anguilm

OTHERS PRESENT: P. Oakes Sr., 688 Roberts; A. DeBoer, 1750 Vulcan; D. Glomb,
700 W. Hackley; D. Jensen, 545 W. Western; P. Babbitt, 545 W.
Western; J. Dinger, 555 W. Western; T. MacAllister, 458 W.
Webster; B. Seebach, 475 W. Western; K. Davis, 3162 Boltwood;
A. Santiago, 3312 Wilcox; J. Schapka, 3312 Wilcox; L. Page, 3328
Wilcox

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of May 10, 2005 be approved was made by B. Larson, supported by E. Fordham and unanimously approved, with the following correction for case #2005-006: He stated the PUD across the street ~~was right on the lot line~~ *had utilized the zero lot line option for their development.*

C. Kufta arrived at 4:03 p.m.

PUBLIC HEARINGS

Hearing, Case 2005-009 Request for a variance from the thirty foot required rear setback to a rear setback of twenty-two feet, to allow construction of a deck, which is more than two feet above grade in an R-1, Single Family Residential Zone on the lot at 712 Roberts St., by Paul Oakes Jr. M. Cameron presented the staff report. The subject property is facing Roberts St. and bordered by vacant wooded land to the rear, or east, which is zoned R-1, Single Family Residential. The adjacent properties to the north and south are also zoned R-1. The property across Roberts Street to the west is owned by the city and is zoned OSC, Open Space Conservation. The property directly east and adjacent to the rear setback is owned by the city and is in the process of being sold to an area contractor with plans to divide it into two lots and build homes on them. This variance request is the result of an enforcement action started by the Inspections Department. The applicant began construction without permits and continued construction after Inspections issued a Stop Work order. The home is designed with a walkout basement and the deck services the main floor. This places the deck a full story above the ground. The applicant's site plan indicates the twenty-two foot setback from the corner of the

deck to the lot line. The property is 168 feet wide by 125 feet deep. Staff has received one comment regarding this case: S. Boone of 1272 Lawrence is in favor of the request.

E. Fordham asked if there were any sidewalks. M. Cameron stated there were not. P. Oakes Sr. spoke on behalf of applicant P. Oakes Jr., who was out of town. He stated there was a deep ravine on the back of the property. When they originally submitted their site plans, they had planned to backfill the area but that didn't work out. They decided to erect a deck to give them some enjoyment of the back yard. R. Hilt asked why they didn't obey the City's stop work order. P. Oakes stated his son's friends were helping build and were not aware of the order. Only the top railing was completed after the order was issued because they felt it was a safety issue.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

J. Clingman-Scott asked what the lot coverage was with the deck. M. Cameron stated it appeared to be well under the 50% requirement. S. Brock wanted to clarify that the lots behind this property were unbuildable. M. Cameron stated that people felt they were unbuildable, but the contractor planned to fill it in and build two homes. E. Fordham asked how deep the property was that fronted Lawrence St. M. Cameron stated it was about 12 – 14 feet. He stated other homes built in that area have had fill brought in.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve the variance to reduce the required rear setback to twenty-two feet to allow construction of a deck, with the conditions that 1) the variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, and 3) the variance is only for the currently proposed deck, was made by B. Larson, supported by S. Brock and unanimously approved, with discussion continuing.

E. Fordham stated the home is very nice, but proper permits should have been obtained. J. Clingman-Scott stated it seemed like the ZBA was hearing cases like this regularly, where property owners are requesting approval after the fact. She wondered if the ZBA was inadvertently encouraging this by approving the requests. B. Larson stated he would work with the Public Relations Committee to try and clear up this issue, and hopefully reduce cases like this one where the applicants have done the work prior to receiving approval.

Hearing, Case 2005-010 Request for a variance from Section 2334: Signs, to allow off-premise freestanding signage in a residential zoning district at 1165 E. Forest, 1191 E. Forest, and 1791 Roberts, by Andrew DeBoer of DeBoer Inc. M. Cameron presented the staff report. The subject properties are adjacent to or near the DeBoer Nursing Home property at 1750 Vulcan Street. The adjacent properties to the west and north are zoned R-1, Single Family Residential; properties to the south across Laketon Ave. are zoned I-1, Light Industrial. The properties on the east side of Roberts are mainly R-1, with the parcels closest to Laketon Ave. being zoned B-4, General Business. All residentially zoned property with a legal business use on it is entitled to signage as allowed in a B-1 zoning district. The B-1 district allows one freestanding sign per property, regardless of the number of businesses there. The nursing home and assisted living center each have a freestanding sign already, and none of the other properties have a business presence on them that would allow them to have additional signage. The site has two pre-existing freestanding monument signs that are considered nonconforming because only one sign of this type is currently allowed. One of the signs depicted on the site plan as sign number 3 can be approved through the normal site plan review and permitting process as a directional sign located on site and will not require a variance. This sign is for DeBoer's Administration office. Two of the off-premise signs are already installed. The sign contractor felt the signs were directional signs and did not need a permit. Two of the off-premise freestanding signs are six square feet in size and a total of four feet in height. The remaining freestanding sign would be just under seven feet in height and twelve feet in length, for an area of approximately thirty-three square feet. The entrances to the DeBoer Nursing Home and the Hermitage Assisted Living Facility are located on Vulcan Street with no entranceway from Laketon Avenue. To enter the facilities a driver must know to travel north on Roberts and back west on E. Forest, then south on Vulcan St. Another route would require the driver to turn north approximately two blocks prior to seeing the facility, onto Madison St. and then immediately turn east on a short stretch of roadway also named East Laketon Ave. until coming to the facility. An entranceway off Roberts Street has been closed for many years. The proposed signs are considered to be off-premise because the lots they are located on have not been joined with the property that houses the facilities. A directional sign approved as part of the site plan review process may not have more than 25% of its area dedicated to business identification or logos and they must be located on-premise. All other signage with copy on it other than signs limited to directional messages, such as "one way", "entrance" and "exit", are considered freestanding signs. Staff has received the following comments regarding this case: Ms. Mell of 1159 E. Laketon Ave. called and stated she has no problem with the request. Mr. Robert Smith at 1223 E. Forest Ave. called to say he is very much in favor of the request to install a new sign. He stated that people drive all over looking for the place and have a hard time finding it. V. Meyers of 1146 E. Dale is not opposed to the request.

J. Clingman-Scott asked if this would still be an issue if the properties had been joined. M. Cameron stated yes, because they're over their freestanding sign allotment. A. DeBoer stated the signs are needed because their facility is very hard to find. C. Kufta asked if they were proposing to keep both of the signs for the Hermitage. A. DeBoer stated they were, to keep the entrance clearly marked. C. Kufta asked about the use of the non-directional signs. A. DeBoer stated they'd like people to know who they are, and where they are. C. Kufta asked if the signs would be illuminated. A. DeBoer stated not at this time. They may use lighting for the signs when it starts getting dark outside earlier. J. Clingman-Scott asked if there would be any landscaping around the signs. A. DeBoer stated there would be. The signs were situated up higher to leave room for shrubbery.

A motion to close the public hearing was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

J. Clingman-Scott asked if the City would require approval for the sign lighting if this variance were approved. M. Cameron stated it would, and he would speak to Mr. DeBoer about it.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve the variance to allow installation of three off-premise signs as currently proposed for 1165 E. Forest, 1191 E. Forest and 1791 Roberts, subject to the conditions that 1) the variance is recorded with the deed to keep record of it in the future, 2) the additions to the properties must be complete within one year (Sec. 2504) or the variance is void, and 3) the variance is granted for the currently proposed signs and locations only, was made by C. Kufra, supported by B. Larson and unanimously approved.

Hearing Case 2005-012 Request for a variance from Section 2334: Signs, to allow installation of wall signage in excess of the 10% allotment allowed by ordinance, at 700 W. Hackley Ave., by Fred Glomb of Chalet House of Flowers. M. Cameron presented the staff report. The subject property is located at the intersection of Hackley Avenue and Seaway Drive, and construction of the new business is ongoing. The adjacent properties across Hackley Avenue are zoned B-4, General Business. The properties to the north and west are zoned R-1, Single Family Residential. The properties on the east side of Seaway Drive are zoned I-1, Light Industrial. Due to lot size limitations and the size of the structure to be built, the physical entrance to the structure does not face the street. The narrow portion of the building facing Hackley Avenue then becomes the front of the building for zoning purposes. This front building face is 405 square feet in size. The signage allotment for this location is 10%, which equals 40.5 feet of signage for the building. Three wall signs are proposed for a total of 130 square feet, and would be internally illuminated. Staff has received one comment regarding this case from Angela Plouhar of 752 Hancock. Ms. Plouhar is not opposed to the request because she does not feel it will impact her.

Members concurred that this was a very attractive building and was an asset to this area.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

J. Clingman-Scott asked if the proposed signage would be allowed if the front of the building were facing Seaway Drive. M. Cameron stated it appeared that they would be well under the

allotted signage, if they could use the Seaway Dr. side of the building as their front. J. Clingman-Scott asked if there were any other signs on the property. M. Cameron stated that there was a monument-style sign already approved for the Hackley St. side.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion that the variance to allow three wall signs as shown on the provided drawings which total 130 square feet in size, be approved with the conditions that 1) The variance is recorded with the deed to keep record of it in the future, and 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

Hearing, Case 2005-013: Request for a variance from Section 2331: Landscaping, Fencing, Walls, Screens and Lighting, to allow construction of fencing/screening of up to 12 feet in height at 545 W. Western Avenue, by Pam Babbitt and the Muskegon Zonta Club. M. Cameron presented the staff report. The subject property is the second parcel west of Fifth Street on the south side of Western Ave. The Amazon building is directly across Western Ave. and Mike's Bar is directly west. The adjacent properties are all zoned H, Heritage. Approval has been granted by the Historic District Commission for construction of a public garden on the site. The fence located on the east lot line would be against a multi-story building also owned by the applicant. The fence along the west lot line is adjacent to the parking area for Mike's Bar. The ordinance is not specific on the maximum height of a fence in the H, Heritage District. Fences in residential districts may be six feet tall as long as they are behind a front building line, and commercial districts allow a maximum height of eight feet behind a front building line. The gazebo to be built on the property will be the principal building on the lot and it will be located toward the center of the property. The alley in this block is to be paved next year as part of our Neighborhoods of Choice grant. Staff has received a number of comments regarding this case. Jim Dinger owner of Mike's Bar at 555 W. Western Ave. which is adjacent to the subject property, is opposed to the tall fence that would abut his parking lot. Natonia Caughey phoned in her comments. She owns 1060 Fifth St., and with her mother 1064 Fifth St., she is in favor of the project and believes it will have a positive impact on the area. Michael Johnson from Waterstone Insurance Agency Inc. wrote to say he does not object to the erection of the fence as long as it is done with good taste and it is in keeping with the historic nature of the neighborhood. Mr. Johnson did express concerns regarding dust, traffic and the associated impact it has on the alley. L. Spataro, President of Nelson Neighborhood Association, forwarded two comments regarding the variance request: Mary Jo McCann of 461 W. Webster Ave. would support the variance provided the fencing actually screens the vacant property. She feels that

some good fencing in the area would enhance the view from Western Avenue. The second comment was from Terry MacAllister of 458 W. Webster Ave. Mr. MacAllister opposes the fence, especially if it is 12 feet high. He also presented a letter on behalf of the Muskegon Heritage Association opposing the request.

Members reviewed a drawing of the proposed garden and fence provided by the applicant. D. Jensen stated the only area of the fence that will be 12 feet high is a 16-foot long area on each side of the garden, consisting of two 8-foot long sections. She brought a sample of the type of fencing material that would be used. E. Fordham asked if the 12-foot section would be against the building. D. Jensen stated yes, on one side. The other side would abut Mike's Bar parking lot. B. Larson asked if the proposed fence material was permitted in a Historic District. T. MacAllister stated that if the HDC had approved steel fencing, then the Heritage Association would concur. R. Hilt preferred that the 12-foot sections be replaced with 8-foot sections. He asked what the reason was for the 12-foot sections. D. Jensen stated that it would highlight the fountains on each side. There will be brick pillars to support it and it would be very stable. There would also be lights to illuminate the area. C. Kufta asked how the 12-foot height was chosen. D. Jensen stated the fencing height was available in four-foot increments, and they wanted to have a tiered effect. S. Brock asked if a pole could hold the lights rather than a fence. D. Jensen stated that a pole of that height would require a large base, and the garden size would have to be reduced to accommodate it. S. Brock asked if the lights could be mounted on the building. D. Jensen stated that was not allowed because the garden and the building are two separate properties.

J. Dinger stated he was previously opposed to the fence because he thought it would be made of wood. He has no objection to the steel fence, unless foliage grows over it and obstructs the airflow to his parking lot next door. T. MacAllister spoke on behalf of the Muskegon Heritage Association (MHA) who owns the building down the street from the garden. He felt that the 12-foot fence was not appropriate for an historic district. He stated the MHA concurred with the HDC's findings in regard to the fence, and that it must comply with City fence ordinance. K. Davis also felt the 12-foot height was inappropriate for an historic district, as did B. Seeback. P. Babbitt stated that there was a 12-foot fence at a home right across the alley from this location. She stated that there would not be any vines covering the fence.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

C. Kufta asked if the ZBA needed to grant a variance on the fence and the height, or just the height. M. Cameron stated just the height, because the City was looking at this as a commercial property, which would allow an 8-foot fence height. B. Larson stated he respected the need to preserve the integrity of the historic district but didn't agree with all the opposition to a relatively small 16-foot-long area of fence.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to

adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve the variance to allow construction of a fence/screen up to 12 feet tall, and decreasing to 4 feet tall in four-foot increments as shown on the provided drawings, with the conditions that 1) The variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, 3) fencing is to be built as indicated on the drawings submitted for approval, and 4) should the property cease being used as a garden, the fencing/screening would have to comply with the current code, was made by B. Larson and supported E. Fordham with discussion continuing on the motion.

R. Hilt stated he had a problem with this request because the fence didn't comply with the HDC recommendation to follow the City fencing ordinance. J. Clingman-Scott didn't feel that granting the variance would conflict with the HDC recommendation, since the fencing ordinance allows the ZBA to grant variances. C. Kufta stated he would be less opposed to it if the inspiration for the 12-foot fence wasn't simply that the fencing company supplied only four-foot increment sections. D. Jensen stated they have changed their plans twice to try and fit the City requirements, and their costs are mounting. If they had to cut the 12-foot section of fence down, it would add still more cost. E. Fordham stated that, looking at the project from the general public's point of view, he didn't feel the short section of 12-foot fence would be objectionable.

A motion to approve the variance to allow construction of a fence/screen up to 12 feet tall, and decreasing to 4 feet tall in four-foot increments as shown on the provided drawings, with the conditions that 1) The variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, 3) fencing is to be built as indicated on the drawings submitted for approval, and 4) should the property cease being used as a garden, the fencing/screening would have to comply with the current code, was made by B. Larson , supported E. Fordham and approved, with R. Hilt voting nay.

Hearing, Case 2005-014: Request for a use variance to allow a three-family residential use at 3312 Wilcox in an R-1 Single-Family Residential Zone, by Alex Santiago and Jane A. Schapka of J. Zander Homes. M. Cameron presented the staff report. The subject property is facing Wilcox and bordered by vacant land to the rear which is zoned R-1, Single Family Residential. All adjacent properties and those opposite on Wilcox are also zoned R-1. The land uses in the area are mixed, with both single-family residential and multi-family residential uses. The subject property was registered as a multi-family residential use up until the most recent Certificate of Compliance expired in December 2002. The property had three structures on it until recently, when the middle structure was partially demolished as part of a remodel project. The Planning Commission recently granted the owners the right to expand the middle structure by 80 square feet to enable them to square the building off and provide more living space. The original single story structure was 420 square feet and with the 80 square foot addition would have been a total of 500 square feet in size. The owner began repairs to the middle structure and encountered

extensive termite, mold and water damage. At this point they removed the damaged portions of the structure. Since the middle building has been demolished to the point it would require more than 50% of the replacement value to be rebuilt, it has lost its non-conforming status. The building was demolished without a demolition permit and when the work was discovered, a stop work order was issued. At this point only the rear retaining wall and one sidewall remains of the structure. Parking on the site is not clearly defined and may not be adequate, but since there has been no change in parking areas it is considered to be non-conforming. The exteriors of the homes are consistent with other residences nearby. Use variances require a 2/3-majority vote of the membership of the Zoning Board of Appeals to be approved. Staff has received the following comments: Susan Hiddema of 3322 Wilcox called and stated she is in favor of the new home. Greg Roberts of 3337 Wilcox phoned in his support for the project and is in favor of the request. Don and Melody Stressman from 3300 Wilcox called and they are in favor of the project. Gretchen Page of 3328 Wilcox also called in support of the request.

J. Clingman-Scott asked what the lot coverage was with the PC variance. M. Cameron estimated it was just under 50%. B. Larson stated he supported the project and asked if he could vote early, because he had to leave to attend the City Commission meeting. S. Brock and J. Clingman-Scott believed that he had to be present for the entire hearing in order to vote; staff and board members concurred. R. Hilt stated that properties like this are not uncommon in the dunes area. A. Santiago stated that once they started the remodeling project, they encountered significant mold and termite damage, which is why so much of the building was torn down. This had not been their original intent. He stated they are very old homes in an historic area. He submitted a petition with signatures of 31 neighbors who supported his request. K. Davis stated the applicants are doing the remodeling to a first-class standard and have put a lot of money into the project. He was in favor of the variance. L. Page stated the neighbors were extremely happy to have them there helping to preserve the neighborhood, and they were doing quality work. He stated the Master Use Plan wording was that homes in Bluffton were “intimately spaced”, and he liked that aspect of the neighborhood. C. Kufta stated there was a history of three residences on this lot. J. Schapka stated it was shown on the 1907 fire map, and the 1925 City directory has three separate addresses listed for the property.

B. Larson left at 5:25 p.m.

A motion to close the public hearing was made by C. Kufta, supported by S. Brock and unanimously approved.

J. Clingman-Scott asked if this was the applicant’s primary residence. A. Santiago stated it was not. E. Fordham asked if there had to be 10 feet between structures, per fire laws. M. Cameron stated it was his understanding that there were ways to rate the structure walls for fire safety. J. Clingman-Scott felt that once a building dies, it dies, and there was hardly anything left of this building. S. Brock asked if the issue could be put aside until the next meeting to provide more time to inspect the property.

A motion to table the issue until next month’s meeting was made by S. Brock and supported by R. Hilt, with C. Kufta, J. Clingman-Scott, and E. Fordham voting nay. Motion to table failed.

A motion to deny the request for a use variance to permit the property at 3312 Wilcox to be used as a three-family residence in an R-1 Single Family Residential zone was made by J. Clingman-Scott and supported by E. Fordham, with discussion continuing.

C. Kufta asked if this motion failed, would only one house be allowed. M. Cameron stated no, the two houses still on the property would continue to enjoy nonconforming status. C. Kufta asked if the applicants had any recourse through the Planning Commission. L. Anguilm stated no.

A motion to deny the request for a use variance to permit the property at 3312 Wilcox to be used as a three-family residence in an R-1 Single Family Residential zone based upon the following review standards: a) that the property could be used (put to a reasonable use) for the purposes permitted in that zone district, b) That the alleged hardship is not caused by the Ordinance and has been created by any person presently having an interest in the property, or by any previous owner, and c) that the alleged hardship is founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, was made by J. Clingman-Scott, supported by E. Fordham, and was approved, with R. Hilt and S. Brock voting nay.

S. Brock asked if applicants could resubmit their request. M. Cameron stated only if there was a significant change, but he didn't see how that could occur in this case. He suggested to applicant that it would be better to now withdraw the next request before it went to a public hearing so the one-year requirement would not apply, since the next request was dependent upon this one being granted. A. Santiago stated he would withdraw the request on case number 2005-15.

Hearing Case 2005-015: Request for a variance from the minimum side setback of 8 feet to a side setback of 3 feet 8 inches and reduction of the rear setback from the required 30 feet to 27 feet. Additionally, two variances from Section 2319: Residential Design Criteria, items 1 and 4. to allow construction of a home with 871 Square feet of living space instead of the required 960 square feet and with an overhang of 6 inches instead of the required 12 inches at 3312 Wilcox, by Alex Santiago and Jane A. Schapka of J. Zander Homes, LLC. Applicant withdrew the request.

OTHER

None

There being no further business, the meeting was adjourned at 5:59 p.m.

dml
6/14/05